

FILE COPY

FILED
MAY 28 1949

CHARLES ELMORE CROPLIN
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. ~~828~~ 90

JAMES ZARICHNY,

Petitioner,

vs.

**STATE BOARD OF AGRICULTURE AND SARAH VAN
HOUSE JONES, WINIFRED G. ARMSTRONG,
FOREST H. AKERS, FREDERICK H. MUELLER,
CLARK L. BRODY, ELLSWORTH B. MORE, MEM-
BERS OF THE STATE BOARD OF AGRICULTURE,**

Respondents

**PETITION FOR WRIT OF HABEAS CORPUS TO THE
SUPREME COURT OF MICHIGAN AND SUPPORT-
ING BRIEF.**

M. G. LESLIE FIELD,
Attorney for Petitioner,

**415 Dime Building,
Detroit 26, Michigan.**

INDEX

SUBJECT INDEX

	Page
Petition for writ of certiorari.....	1
Summary and short statement of matter involved.....	1
Basis of jurisdiction.....	5
Questions presented.....	5
Reasons relied on for allowance of writ.....	6
Prayer for writ.....	6
Brief in support of petition.....	8
Opinions below.....	8
Jurisdiction.....	8
Statement.....	8
Specification of errors.....	11
Summary of argument.....	12
Argument.....	13
Conclusion.....	15

TABLE OF CASES CITED

<i>Baltimore University v. Colton</i> , 98 Md. 623.....	14
<i>Booker v. Grand Rapids Medical College</i> , 156 Mich. 95.....	13
<i>Bridges v. Wixon</i> , 326 U. S. 135.....	14
<i>Connell v. Gray</i> , 33 Okla. 591.....	13
<i>Gott v. Berea College</i> , 156 Ky. 376.....	13
<i>Holman v. Trustees of School District No. 5</i> , 77 Mich. 605.....	13
<i>Kovacs v. Cooper</i> , 69 S. Ct. 448.....	14
<i>Reed v. Civil Service Commission</i> , 301 Mich. 137.....	13
<i>State ex rel. Stallard v. White</i> , 82 Ind. 278.....	13
<i>Tanton v. McKenney</i> , 226 Mich. 245.....	14
<i>Thomas v. Collins</i> , 323 U. S. 516.....	14
<i>Thompson v. Auditor General</i> , 261 Mich. 624.....	13
<i>Wagh v. Board of Trustees</i> , 237 U. S. 589.....	13
<i>West Virginia State Board of Education v. Barnette</i> , 319 U. S. 624.....	14

	Page
<i>Winters v. People of the State of New York</i> , 333 U. S. 507	14
<i>Woods v. Simpson</i> , 146 Md. 547, 39 A.L.R. 1016; 55 Am. Jur. 14	13
<i>Workman v. Board of Education</i> , 18 Mich. 399	13

STATUTES CITED

Callahan Act (Act 270 P.A. Mich. 1947)	10
C.L. '29, Sec. 13531; M.S.A. 27.25	3
Constitution of the State of Michigan:	
Article II, Sections 2, 4 and 16	3
Article VII, Section 4	13
Article XI, Section 10	2
Constitution of the United States:	
First Amendment	5, 6, 11, 12
Fifth Amendment	5, 6, 11, 12
Fourteenth Amendment	5, 6, 11, 12
Mich. Comp. Laws, 1929:	
Section 13535, Stat. Ann. 27.29	13
Section 15186, Stat. Ann. 27.2230	13
United States Code, Section 1257, Title 28	5

OTHER AUTHORITIES CITED

"Higher Education for American Democracy, Vol. I, Establishing the Goals," a Report of the President's Commission on Higher Education, 1947:	
p. 14	14, 15
Michigan Court Rules, Rule 10, Sec. 4	3

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 828

JAMES ZARICHNY,

Petitioner,

vs.

STATE BOARD OF AGRICULTURE AND SARAH VAN
HOUSEN JONES, WINIFRED G. ARMSTRONG,
FOREST H. AKERS, FREDERICK H. MUELLER,
CLARK L. BRODY, ELLSWORTH B. MORE, MEM-
BERS OF THE STATE BOARD OF AGRICULTURE,

Respondents

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF MICHIGAN AND SUPPORT-
ING BRIEF.**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

James Zarichny, petitioner, respectfully shows:

I

Summary and Short Statement of Matter Involved

Petitioner, a resident of Michigan, entered Michigan State College of Agriculture and Applied Science (hereinafter for brevity referred to as Michigan State College)

as an engineering student. Michigan State College is a constitutional college (Michigan Constitution Art. XI, Section 10) maintained by the State of Michigan and the individual respondents constitute a body corporate and the governing body of the college (^{7b}2b Sec. 7).

Petitioner continued his studies ^{7b}at the College (in the meantime transferring to the mathematics department) until February, 1943 when he entered the Army of the United States. In January, 194~~8~~⁶ after 22 months of overseas service, petitioner was honorably discharged from the army and in April, 1946 re-enrolled in the College as a mathematics student.

Petitioner was a student member of an organization known as the Spartan Chapter of American Youth for Democracy. In November, 1946 the College Student Council revoked the organization's permission to meet. Following this on February 7, 1947 all members of the organization including petitioner were placed on strict disciplinary probation for an indefinite period by John A. Hannah, President of the College. The terms of probation were that petitioner was not to participate in any extra-curricular activities or represent Michigan State College on any forensic or other team, be a member of any college musical organization or participate in any activities of any student organization. The letter advising him of this action (Exhibit 1, p. 5) warned him that if he participated in any activities of the AYD organization so long as it remained an unrecognized student organization, he would thus automatically suspend himself and would no longer be a student of the College. The letter further informed him that "any political beliefs that you may hold play no part in this action, and the Faculty Committee and the College have not been concerned with your membership in any political party or your allegiance to any particular political group."

At the end of the spring term, 1947, the Dean of Students suggested to petitioner that he withdraw from the College and not return the following term but petitioner refused to withdraw and he returned to the school in the fall of 1947. By letter dated December 18, 1948 petitioner was advised by the Dean of Students that it had been determined that he had violated the terms of his probation and therefore would not be permitted to re-enroll as a student at the College (Exhibit 2, p. 6). Petitioner by letter inquired as to the reason or reasons why he would not be permitted to re-enroll (Exhibit 3, p. 7) but received no answer. At this time petitioner had one-quarter semester of the academic year remaining to be completed before fulfilling the requirements for a diploma and his scholastic standing was above the minimum required for graduation.

On January 12, 1949 petitioner seeking reinstatement filed a petition for writ of mandamus in the Michigan Supreme Court. The petition alleged the facts substantially as set forth above, charged that respondents acted arbitrarily, unreasonably and illegally and among other things had acted in violation of the First, Fifth and Fourteenth Amendments to the Constitution of the United States and in violation of Article II, Sections 2, 4 and 16 of the Constitution of the State of Michigan.

The petition for writ of mandamus was summarily denied without opinion by the Michigan Supreme Court on January 13, 1949, the day following its filing. No answer to the petition was filed. On January 20, 1949 motion for reconsideration was filed and request for oral argument made under the statute (C. L. '29, Sec. 13531; M. S. A. 27.25) and the court rule (Michigan Court Rules, Rule 10, Sec. 4) which provide for oral arguments in cases involving constitutional questions or personal liberties. After the filing of motion for reconsideration respondents filed a motion to dismiss

the petition for writ of mandamus and answer alleging substantially that petitioner was put on probation for participating in activities of an organization (AYD) which had not been approved by the Student Council and that members of that organization had circulated handbills at an on-campus rally advocating an FEPC for Michigan and that he had been expelled for arranging a meeting at which the leader of the Michigan Communist Party and one of the twelve Communists under indictment in New York was the principal speaker. The meeting was held off the campus but in a building across the street from the campus frequently used by student groups. Petitioner filed a reply to the answer admitting that he had assisted in arranging a place for the meeting referred to and that he had attended the meeting as a spectator; that during the meeting in reply to a suggestion made by a non-student, petitioner rose and spoke against any appeal for funds being made to student organizations on the ground that such appeals would only produce trouble.

In the reply petitioner further stated that the meeting in question was not sponsored by any student organization but was sponsored and held under the auspices of the Ingham County Civil Rights Committee, the majority of the members of which were non-students. Petitioner further alleged that his attendance at the meeting was in nowise connected with his status as a student and was not a student activity, but was a matter relating to his private and personal life not subject to regulation or control by respondents and that his expulsion from College for attending or participating in said meeting constituted an invasion and deprivation of his constitutional rights.

On March 3, 1949 the Michigan Supreme Court affirmed its former order denying the petition and stated that the

court rule above mentioned had no application to the case. No opinion was filed and no hearing held.

Basis of Jurisdiction

'Jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code.

Questions Presented

1. Under the circumstances outlined was the expulsion of petitioner from Michigan State College an unlawful invasion and deprivation of his constitutional rights of free speech and assembly under the First Amendment to the United States Constitution?

2. Was petitioner deprived of his liberty and property without due process of law contrary to the prohibition of the Fifth Amendment to the United States Constitution in being expelled from Michigan State College for attending an off-campus civic meeting?

3. Was petitioner's privileges and immunities as a citizen of the United States abridged by the State of Michigan and was he denied equal protection of the laws and deprived of his liberty and property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States?

4. Were the facts and circumstances under which petitioner was placed on probation and subsequently expelled from Michigan State College so unreasonable, arbitrary and unjust as to amount to a denial of petitioner's constitutional rights under the First, Fifth and Fourteenth Amendments to the United States Constitution?

Reasons Relied On for Allowance of Writ

1. The Michigan Supreme Court in denying petitioner relief on his petition for writ of mandamus has decided adversely to him a substantial federal question involving civil rights under the Bill of Rights not heretofore specifically determined by this Court.

2. The Michigan Supreme Court in denying petitioner relief has decided federal questions with respect to the constitutional rights of freedom of speech and assembly guaranteed by the First Amendment to the United States Constitution in a way probably not in accord with applicable decisions.

3. In denying petitioner relief, the Michigan Supreme Court without affording him a hearing has decided federal questions involving due process and the privileges and immunities of citizens of the United States under the Fifth and Fourteenth Amendments to the United States Constitution in a manner probably not in accord with applicable decisions of this Court.

WHEREFORE, Petitioner Prays:

1. That a writ of certiorari may issue out of and under the seal of this Court directed to the Supreme Court of the State of Michigan commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings in said court had in case numbered 44341½ wherein James Zarichny is plaintiff and State Board of Agriculture, *et al.* are defendants, to the end that said cause may be reviewed and determined by this Court as provided for by the statutes of the United States.

2. That the order and judgment of the Supreme Court of the State of Michigan in said cause may be reversed by

this Court and such further proceedings had or order or judgment entered as this Court may determine.

3. That petitioner may have such further relief in the premises as this Court may deem just and proper.

JAMES ZARICHNY,

Petitioner,

By G. LESLIE FIELD,

Attorney for Petitioner,

415 Dime Building,

Detroit 26, Michigan.

Dated May 27, 1949.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinions Below

No opinions were filed by the Michigan Supreme Court in denying petitioner's application for writ of mandamus and his motion for reconsideration of such order. Neither order is reported.

Jurisdiction

The order of the Michigan Supreme Court denying petitioner's motion for reconsideration of order denying his application for writ of mandamus is dated and was entered February 28, 1949.

Section 1257(3), Title 28, U. S. C. is believed to sustain jurisdiction of the Court herein.

Statement

Petitioner enrolled as an engineering student at Michigan State College of Agriculture and Applied Science in September, 1941, later transferring to the mathematics department (R. 9). He left the College in February, 1943 to enter the U. S. Army and after 22 months overseas service he was honorably discharged and re-enrolled at the College in April, 1946 (R. 1, 9). It is not claimed that petitioner's scholastic work was below passing standards or insufficient to warrant his graduation upon completion of his course of study or of such a character as to warrant either placing him on probation or expelling him (R. 14).

In the spring of 1946 an organization known as the "American Youth for Democracy" of which petitioner was a member applied to the Student Council of the College for permission to carry on its program on the campus (R. 11).

It was one of two or three groups seeking recognition on the basis of veterans problems such as housing, racial equality and the like. Permission was granted to hold one or two meetings on the campus during the summer on a probationary basis but in the fall of 1946 the Student Council refused to approve the AYD as a permanent college organization but extended recognition to the Spartan Citizens Committee which was said to have proposed an approximately parallel program (R. 11).

On February 6, 1947 the President of the College notified six members of the Spartan Chapter (the college chapter) of AYD including petitioner that they were placed on strict disciplinary probation for an indefinite period for continued participation in AYD activities after it had been refused recognition by the Student Council (R. 2, 5:Exh. 1). The activities leading to the imposition of probation consisted of continuing as an organization and circulating handbills advocating a FEPC for Michigan at an on-campus college approved student rally called in support of an FEPC bill then pending before the Michigan Legislature (R. 12).

The terms of petitioner's probation were a) that he was not to participate in any extra-curricular activities or represent the College on any forensic or other team or be a member of any college musical organization, and b) that he was not to participate in the affairs of any student organization. Petitioner was warned that participation by him in any activities of AYD so long as it remained unrecognized would result in "automatic" suspension from the College)R. 5:Exh. 1).

It is alleged by respondents (R. 12-13) but denied by petitioner (R. 15) that during the spring 1947 term petitioner had been distributing literature of the Communist Party and it was suggested to him by the Dean of Students that he withdraw from the College and transfer to some other

institution (R. 2, 13). Petitioner declined the suggestion and re-enrolled in the fall still under probation though all the other students placed on probation had been released from probation (R. 13, 15).

In the spring of 1948 petitioner was found guilty of contempt of the Michigan State Senate in refusing to answer questions before a Senate Committee created by the Callahan Act (Act 270 P. A. Mich. 1947) as to whether or not he was a member of the Communist Party (R. 13). This event was not considered a violation of probation and petitioner was permitted to continue as a student.

On December 6, 1948 a public meeting was held at College House, a building off-campus but directly across the street from it the use of which by student groups is encouraged by the College. At this meeting Carl Winter, leader of the Michigan Communist Party and one of the twelve Communist leaders under federal indictment in New York, was the principal speaker. Petitioner attended this meeting (R. 13-14). It is the contention of respondents that petitioner arranged the meeting, planned and conducted the program and made an appeal to the audience for cash contributions to aid in the defense of the indicted men. Petitioner denied these contentions and alleged that he was only a spectator at the meeting; that when a non-student made an appeal for contributions to a defense fund, he spoke against the appeal; that he assisted in making arrangements for the place of the meeting and that it was sponsored by the Ingham County Civil Rights Committee, an association of people, including some college students, in the county interested in the protection and preservation of civil rights (R. 15, 16).

On this important point petitioner further alleged that his attendance at this meeting was a matter relating to his personal private life and was in nowise connected with

his status as a student, and was not a student activity curricular or extra-curricular as the great majority of the civil rights committee that sponsored the meeting were non-students. He further stated: "Petitioner's right to attend, or even to arrange for, the session and plan and conduct the program as alleged by the defendants was not subject to regulation or control by defendants (respondents) and the forbearance from such activity on the part of petitioner could not lawfully be made a condition of his continued admission as a student at the Michigan State College of Agriculture and Applied Science, such condition constituting an invasion and deprivation of petitioner's constitutional right as set out in the petition heretofore filed" (R. 16).

By letter dated December 10, 1948 not specifying the nature of the alleged violation of the terms of his probation and without a hearing, petitioner was notified by the Dean of Students that he had violated the terms of his probation and would not be permitted to re-enroll as a student at the College (R. 6:Exh. 2).

Petitioner's subsequent attempt to obtain reinstatement through mandamus proceedings in the Michigan Supreme Court was unsuccessful and his application for a writ of mandamus was denied without hearing (R. 7) as was his motion for reconsideration of the order of denial (R. 17).

Specification of Errors

1. The Supreme Court's denial of petitioner's application to obtain reinstatement in Michigan State College by writ of mandamus contravenes the freedom of speech and assembly guarantees of the First Amendment to the United States Constitution, the due process provision of the Fifth Amendment and the due process, privilege and immunities, and equal protection of the law provisions of the Fourteenth Amendment.

2. The Michigan Supreme Court's order and judgment denied petitioner's constitutional rights under the First, Fifth and Fourteenth Amendments to the United States Constitution.

3. The Michigan Supreme Court erred in failing to hold that the expulsion of petitioner from Michigan State College was arbitrary, unreasonable and in contravention of his constitutional rights of freedom of speech and assembly, a deprivation of his liberty and property without due process of law, a denial of his right to equal protection of the laws and an abridgment of his privileges and immunities as a citizen of the United States, contrary to the provisions of the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

4. The Michigan Supreme Court erred in refusing to reinstate petitioner as a student in Michigan State College.

Summary of Argument

1 Petitioner's only remedy was by original proceedings in the Michigan Supreme Court by mandamus to secure his reinstatement in the College. The decisive issue is whether a state owned and administered land grant college may impose disciplinary restraints upon students in connection with off-campus activities the effect of which is to deny to such students the rights of free speech and assembly guaranteed by the First Amendment to the United States Constitution and to expel students for failing to conform to such restraints. It is contended that the expulsion of petitioner was an unreasonable and arbitrary act and that the college authorities had no right to expel petitioner for exercising his constitutional rights of free speech and assembly by attending a public meeting off-campus to consider civil rights and participating therein.

Argument

Petitioner's only remedy was by mandamus in the Michigan Supreme Court. Michigan Constitution, Article VII, Sec. 4; Mich. Comp. Laws, 1929, Section 13535, Stat. Ann. 27.29; Mich. Comp. Laws, 1929, Section 15186, Stat. Ann. 27.2230; *Holman v. Trustees of School District No. 5*, 77 Mich. 605; *Workman v. Board of Education*, 18 Mich. 399; *Reed v. Civil Service Commission*, 301 Mich. 137; *Thompson v. Auditor General*, 261 Mich. 624. Under the Michigan Constitutional provision referred to, the Supreme Court had jurisdiction to issue the writ applied for and to hear and determine the same.

There is no question but what the governing authorities of a state university may make reasonable rules and regulations for the orderly management of the school and the preservation of discipline therein and unless such rules are arbitrary or unreasonable the courts will not interfere. *Wagh v. Board of Trustees*, 237 U. S. 589. Whether such rules and regulations are wise or expedient or their aims worthy is a matter left solely to the discretion of the authorities and with the exercise of such discretion the courts will not interfere in the absence of arbitrary action or abuse of discretion. *Gott v. Berea College*, 156 Ky. 376; *Woods v. Simpson*, 146 Md. 547, 39 A. L. R. 1016; 55 Am. Jur. 14. It is recognized that students may be made to observe rules and regulations which could not be imposed upon people in general. *Gott v. Berea College*, *supra*; *Connell v. Gray*, 33 Okla. 591. However rules and regulations which are against common right or palpably unreasonable may be annulled by the courts. *State ex rel. Stallard v. White*, 82 Ind. 278; *Connell v. Gray*, *supra*.

Thus in *Booker v. Grand Rapids Medical College*, 156 Mich. 95, it was held that a student who has been admitted

to the college and has paid the fees for the first year's instruction had a contract right to continue until he, in regular course, attains his diploma and he cannot arbitrarily be dismissed at the close of a year merely because he is obnoxious to other students. See also *Baltimore University v. Colton*, 98 Md. 623.

It is clear that a rule or regulation that contravenes constitutional rights is void. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624. It is admitted that petitioner was expelled for attending and participating in a public meeting off campus and for no other reason. Such action on its face is void as it punished acts within the guarantee of free speech and assembly contrary to the First and Fourteenth Amendments to the United States Constitution. *Winters v. People of State of New York*, 333 U. S. 507. See *Kovacs v. Cooper*, 69 S. Ct. 448; *Bridges v. Wixon*, 326 U. S. 135; *Thomas v. Collins*, 323 U. S. 516.

It is admitted that petitioner was expelled without a hearing. He was thus deprived of a valuable property right (i. e. to receive his degree) on the very eve of his graduation (he had one-quarter of a semester to go to complete his course) without any opportunity to be heard in his own defense. *Tanton v. McKenney*, 226 Mich. 245 at 252. See *Holman v. School District*, *supra*.

There is no conceivable reason why students should be excluded from the benefits and rights guaranteed by the Constitution and particularly the First Amendment. On the contrary there is every reason for including them as an essential part of their education and training is predicated upon the basic democratic processes inherent in the free speech concept. This contention is ably expressed in the following quotation from "Higher Education for American Democracy, Vol. I, Establishing the Goals", a Report of

the President's Commission on Higher Education, 1947:
p. 14:

"This integration of democratic principles into the active life of a person and a people is not to be achieved merely by studying or discussing democracy. Classroom teaching of the American tradition, however excellent, will not weave its spirit into the innermost fiber of the students. Experience in the give and take of free men in a free society is equally necessary. Democracy must be lived to be thoroughly understood. It must become an established attitude and activity, not just a body of remote and abstract doctrine—a way for men to live and work harmoniously together, not just words in a textbook or a series of slogans.

"To achieve such practice in democratic action the President's Commission recommends a careful review of administrative policies in institutions of higher education. Revision may be necessary to give students every possible experience in democratic processes within the college community. Young people cannot be expected to develop a firm allegiance to the democratic faith they are taught in the classroom if their campus life is carried on in an authoritarian atmosphere."

Conclusion

The subject of academic freedom with specific reference to the conflict between the guarantees of the First Amendment and the right to impose disciplinary regulations and sanctions upon students in state educational institutions stands sorely in need of definition and clarification by this Court. Upon this record, it is earnestly contended that the writ of certiorari prayed for should be granted.

Respectfully submitted,

G. LESLIE FIELD,
Attorney for James Zarichny,
Petitioner,
415 Dime Building,
Detroit 26, Michigan.